

IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES,

Appellee

v.

Steven G. FLORES
Missile Technician Petty Officer
First Class (E-6)
U.S. Navy,

Appellant

BRIEF ON BEHALF OF APPELLANT

USCA Dkt. No. 26-0005/NA

Crim. App. Dkt. No. 202300290

TO THE HONORABLE JUDGES OF THE UNITED STATES COURT OF
APPEALS FOR THE ARMED FORCES:

MEGGIE C. KANE-CRUZ
LT, JAGC, USN
Appellate Defense Counsel
1254 Charles Morris Street, SE
Building 58, Suite 100
Washington, DC 20374
Phone: (202) 685-8502
meggie.c.kane-cruz.mil@us.navy.mil
USCAAF Bar No. 38051

FRANK J. SPINNER
Attorney at Law
1420 Golden Hills Road
Colorado Springs, CO 80919
Phone: (719) 233-7192
Lawspin@aol.com
USCAAF Bar No. 26201

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Granted Issue

Whether the military judge abused her discretion in failing to suppress Appellant's statements to law enforcement after he had invoked his right to counsel in violation of the Sixth Amendment and M.R.E. 305(c)(3).

Statement of Statutory Jurisdiction

After being found guilty at general court-martial, Appellant timely appealed the lower court for review under Article 66(b)(3), Uniform Code of Military Justice (UCMJ).¹ Accordingly, this Court has jurisdiction over the case under Article 67(a)(3), UCMJ.²

Relevant Authorities

The Sixth Amendment provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the Assistance of Counsel for his defence.³

Military Rule of Evidence 305 provides in relevant part:

(c)(3) *Sixth Amendment Right to Counsel*. If an accused against whom charges have been preferred is interrogated on matters concerning the preferred charges by anyone acting in a law enforcement capacity, or the agent of such a person, and the accused requests counsel, or if the accused has appointed or retained counsel, any statement made in the

¹ 10 U.S.C. § 866(b)(3).

² 10 U.S.C. § 867(a)(3).

³ U.S. CONST. amend. VI.

interrogation, or evidence derived from the interrogation, is inadmissible unless counsel was present for the interrogation.⁴

Statement of the Case

A panel of officer and enlisted members sitting as a general court-martial convicted Appellant, contrary to his pleas, of two specifications of rape of a child who has not attained the age of twelve years in violation of Article 120b, UCMJ.⁵ The members sentenced him to a dishonorable discharge and confinement for a period of life with the possibility of parole.⁶ The convening authority took no action on the findings and approved the sentence as adjudged, which the Military Judge entered into judgment.⁷ The lower court affirmed the findings and sentence.⁸ The lower court denied Appellant's motion for reconsideration on August 8, 2025. Appellant then timely petitioned this Court for review, which was granted on January 15, 2026.

Statement of Facts

On July 19, 2022, Georgia State Police arrested Appellant for rape of a child.⁹ State Detective Crews read Appellant his *Miranda* rights.¹⁰ Appellant

⁴ MANUAL FOR COURTS-MARTIAL, UNITED STATES, MIL. R. EVID. 305(c)(3).

⁵ JA 642-43.

⁶ JA 644.

⁷ Convening Authority's Action; Entry of Judgment, JA 645-47.

⁸ *United States v. Flores*, No. 202300290, slip op. (N-M. Ct. Crim. App. June 17, 2025), JA 1.

⁹ App. Ex. XLVII, JA 418.

¹⁰ App. Ex. XLVII, JA 416.

invoked his right to counsel, but Detective Crews continued questioning until Appellant reasserted his rights, leading to suppression of those statements in his subsequent court-martial.¹¹

On August 5, 2022, Mr. Gough, Appellant's Georgia defense counsel, filed motions for a preliminary hearing in Georgia State court.¹² On August 22, 2022, the District Attorney for Brunswick Judicial Circuit, unbeknownst to Appellant, agreed to release him to the custody of the United States Navy for trial and defer state prosecution.¹³ After custody transferred, the Camden County Sheriff's Office lodged a detainer against Appellant for the pending Camden County warrants.¹⁴

The next day, two Naval Criminal Investigative Service (NCIS) special agents, Special Agent (SA) Coop and Special Agent Wright, interrogated Appellant at the NCIS office.¹⁵ Despite knowing of his attorney representation, the agents did not notify Appellant's civilian defense counsel.¹⁶ Appellant was not informed that jurisdiction had been transferred to the military or that he would be going back to the base.

¹¹ App. Ex. XLVII, JA 427.

¹² App. Ex. XXVIII, JA 70.

¹³ App. Ex. XVI, JA 99.

¹⁴ App. Ex. XVI, JA 100.

¹⁵ App. Ex. XVI, JA 252.

¹⁶ JA 264.

During the forty-minute car ride from civilian custody, the NCIS agents engaged Appellant in casual conversation about music and jail conditions.¹⁷ During this conversation SA Coop texted trial counsel to confirm they could attempt a third interrogation if Appellant waived his rights.¹⁸ Trial counsel responded, “Get him to waive in writing but no, no issues . . . if you can record it that would be awesome. He does have an attorney so be mindful of that.”¹⁹

Appellant signed an affidavit to his civilian defense counsel on March 9, 2023, detailing his interactions with the NCIS agents.²⁰ That same day, his civilian defense counsel submitted Appellant’s affidavit to the court as an enclosure to their suppression motion supplement.²¹ During the ride, the NCIS agents made conversation completely unrelated to Appellant’s charges and the investigation.²² They asked if he would like the radio on.²³ They asked him what type of music he wanted playing in the car and if he wanted the windows down.²⁴

Special Agents Coop and Wright claimed that Appellant told them he had a hard time at the facility and the people there did not treat him well.²⁵ When they

¹⁷ App. Ex. XXXII, JA 191-93.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ App. Ex. XLIV, JA 243-44.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ App. Ex. XLVII, JA 253.

arrived at the NCIS office, they permitted Appellant to shower.²⁶ He was then brought into an interview room and provided water.²⁷ According to the agents, they wanted “to give Appellant another opportunity to speak to [them] about the investigation and about what happened, especially the night of [July 19, 2022].”²⁸

Appellant then asked, “So what’s next?”²⁹ The agents responded that they had to complete paperwork and then he would be taken to the hospital.³⁰

At the hearing, SA Coop admitted he was seeking to build rapport with Appellant to get him relaxed and establish a “baseline.”³¹ After 30 minutes of conversation that mainly centered around working out while in the county jail, SA Coop said:

So, like, I appreciate you sharing all that and stuff with us. Like, I think your family needs you . . . and the best way to do that is, you know, stay in the Navy. Sounds liked you’re a good sailor Would you be willing to talk to us about, you know, while you’re jammed up here, telling us your side of the story?³²

²⁶ *Id.*; JA 255.

²⁷ JA 255.

²⁸ JA 255.

²⁹ App. Ex. XVI, JA 255-60

³⁰ *Id.*

³¹ JA 257-58; App. Ex. XVI, JA 101-133 (SA Coop spoke with Appellant about his workout routine; then shifted the conversation to Appellant’s background and time spent in Texas; then shifted to discussions about what job Appellant might do when he gets out of the Navy; then to his father, who was terminally ill, and other family members).

³² App. Ex. XVI, JA 135.

Appellant replied, “well, sure.”³³ Special Agent Coop gave Appellant a military rights cleansing waiver form.³⁴ Appellant read the form to himself, wrote his initials next to his rights, and read the last paragraph out loud.³⁵ Special Agent Coop said “[W]e appreciate you talking to us. And hear what you gotta say.”³⁶

Appellant’s trial defense team filed a Motion to Suppress his statements to NCIS.³⁷ The government opposed the motion and filed a supplemental briefing regarding the applicability of the dual sovereignty doctrine to the Sixth Amendment.³⁸ The government argued that Fifth Amendment’s dual sovereignty doctrine applies to the Sixth Amendment because “ ‘Offense’ embodies the same meaning under the Sixth Amendment’s right to counsel as under the Fifth Amendment’s double jeopardy principles.”³⁹ The defense also filed a supplemental bench brief arguing the Fifth Amendment’s dual sovereignty doctrine does not apply to the Sixth Amendment’s right to counsel.⁴⁰

The military judge denied the defense’s motion.⁴¹ The military judge held that Appellant “initiated the conversation about his treatment in the jail” and his

³³ *Id.*

³⁴ *Id.*

³⁵ App. Ex. XVI, JA 133.

³⁶ *Id.*

³⁷ App. Ex. XV, JA 57.

³⁸ App. Ex. XXVII, JA 70; App. Ex. XXXIX, JA 87.

³⁹ App. Ex. XXXIX, JA 87.

⁴⁰ App. Ex. XLIII, JA 93-96.

⁴¹ App. Ex. XLVII, JA 439.

question “so what’s next” was similar to the defendant in *Oregon v. Bradshaw*, 462 U.S. 1039 (1983).⁴² She found that the government met its burden to establish that Appellant initiated the communication with NCIS, leading to the waiver of his rights.⁴³

At trial, the prosecution relied heavily upon Appellant’s statements in the interview at the NCIS office.⁴⁴ In opening, the government advised the members, “you’ll hear from the accused himself in his own words to NCIS, where he admitted that he was naked in bed under the covers, with his 9-year-old daughter”⁴⁵ Trial counsel continued utilizing Appellant’s words throughout the entirety of their argument, later telling the members, “he puts himself in that bed. He’s completely naked. That’s according to him”⁴⁶

Summary of Argument

The military judge abused her discretion by failing to suppress Appellant’s statements to law enforcement when she relied on the dual sovereignty doctrine. Despite knowing Appellant was represented by counsel, NCIS—while under a trial counsel’s direction—undertook steps designed to facilitate Appellant’s custodial interrogation without counsel present and without any reinitiation by Appellant.

⁴² *Id.* JA 434-35.

⁴³ *Id.*

⁴⁴ JA 596-98.

⁴⁵ JA 453-54.

⁴⁶ JA 600.

This violated Appellant’s Sixth Amendment rights and M.R.E. 305(c).

The dual sovereignty doctrine should not apply in joint military-civilian investigations, as occurred in this case, which will ensure that constitutional safeguards are not eroded by artificial distinctions and coercive tactics.

Issue and Argument

The military judge abused her discretion in failing to suppress Appellant’s statements to law enforcement after he had invoked his right to counsel in violation of the Sixth Amendment and M.R.E. 305(c)(3).

Standard of Review

This Court “review[s] a military judge’s denial of a motion to suppress for Ldifference of opinion.”⁴⁷

A military judge abuses his discretion when he: (1) “predicates a ruling on findings of fact that are not supported by the evidence of record,” (2) “uses incorrect legal principles,” (3) “applies correct legal principles to the facts in a way that is clearly unreasonable,” or (4) “fails to consider important facts.”⁴⁸

Law and Argument

Military Rule of Evidence 305(c)(3) is based on the Sixth Amendment right to counsel. It provides: “If an accused against whom charges have been preferred is interrogated on matters concerning the preferred charges by anyone acting in a law

⁴⁷ *United States v. Jones*, 73 M.J. 357, 360 (C.A.A.F. 2014).

⁴⁸ *United States v. Rudometkin*, 82 M.J. 396, 401 (C.A.A.F. 2022).

enforcement capacity, or the agent of such person, and the accused requests counsel, or if the accused has appointed or retained counsel, any statement made in the interrogation, or evidence derived from the interrogation, is inadmissible unless counsel was present for the interrogation.”

Congress has granted military accused the right to detailed military counsel, military counsel of choice if reasonably available, and civilian counsel of choice at the accused's own expense.⁴⁹ Furthermore, “the Sixth Amendment right to counsel, codified under Article 27, applies to the pretrial, trial, and post-trial stages.”⁵⁰

In *McNeil v. Wisconsin*, the Supreme Court held that the Sixth Amendment right to counsel is “offense specific.”⁵¹ In *Texas v. Cobb*, the Court further ruled that the Sixth Amendment right will “encompass offenses that, even if not formally charged, would be considered the same offense under the *Blockburger* test.”⁵²

In *United States v. Gouveia*, the Supreme Court held that the Sixth Amendment right to counsel attaches at the initiation of adversarial judicial proceedings, including assisting aid at trial and at “critical” pretrial proceedings.⁵³

⁴⁹ Art. 38(b), UCMJ; *United States v. Gilmet*, 83 M.J. 398, 406 (C.A.A.F. 2023).

⁵⁰ *United States v. Scott*, 51 M.J. 326 (C.A.A.F. 1999).

⁵¹ *McNeil v. Wisconsin*, 501 U.S. 171 (1991).

⁵² *Texas v. Cobb*, 532 U.S. 162, 173 (2001); *Blockburger v. United States*, 284 U.S. 299, 304 (1932) “[W]here the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of a fact which the other does not.” *Id.*

⁵³ *United States v. Gouveia*, 467 U.S. 180, 187-89 (1984).

The dual sovereignty doctrine stands for the proposition that the invocation of one's rights to an attorney and to remain silent in a certain sovereign does not carry over to an investigation in another sovereign. There is presently a split in the federal circuit courts as to the applicability of the dual sovereignty doctrine with regard to the Sixth Amendment right to counsel: The Second and Eighth Circuits have declined to apply the dual sovereignty doctrine to an analysis of the Sixth Amendment, whereas the First, Fourth, Fifth, and Eleventh Circuits have interpreted the dual sovereignty doctrine to mean that invocation of rights in a state or federal proceeding does not apply to the opposite jurisdiction in a separate sovereign.

At trial, the defense asked the military judge to take judicial notice of Georgia Rule 7.1 pursuant to M.R.E. 202(a) for purposes of recognizing MT1 Flores' representation by counsel in an adversarial proceeding in the state of Georgia at the time of his interrogation by NCIS.⁵⁴ Prior to MT1 Flores' interrogation by NCIS on August 23, 2022, Mr. Gough, MT1 Flores' civilian attorney, had filed a motion for a preliminary hearing and motion for bail without waiver of preliminary hearing on behalf of MT1 Flores after his arrest, which

⁵⁴ App. Ex. XLIII, JA 93.

occurred on July 19, 2022. In addition, Mr. Gough ultimately represented MT1 Flores at his pretrial confinement hearing with the military.⁵⁵

The military judge adopted the analysis of four of the Circuit Courts and determined that MT1 Flores’ invocation of his right to counsel in the pending state proceedings against him at the time of the NCIS interview did not carry over to the military investigation.⁵⁶ The military judge based her opinion, in large part, on the fact that the trial was held in a geographical area that includes the Eleventh Circuit – with no discussion as to the fact that military courts-martial do not fall under their geographic federal judicial circuits for precedential purposes.⁵⁷ As a result, she found that because the military is a separate sovereign, any Sixth Amendment right that might have existed in the state of Georgia did not carry over to the military interrogation. She furthermore found that MT1 Flores’ attorney’s notice of appearance in Georgia did not indicate that an adversarial judicial proceeding had been initiated, and thus MT1 Flores’ Sixth Amendment rights had not yet attached regardless of the dual sovereignty doctrine.

M.R.E. 305 (f)(1) provides: “When a person subject to the code is interrogated by an official or agent of the United States, of the District of Columbia, or of a State, Commonwealth, or possession of the United States, or any

⁵⁵ App. Ex. XLIII, JA 97.

⁵⁶ App. Ex. XLVII, JA 432.

⁵⁷ *Id.*

political subdivision of such a State, Commonwealth, or possession, the person's entitlement to rights warnings and the validity of any waiver of applicable rights will be determined by the principles of law generally recognized in the trial of criminal cases in the United States district courts involving similar interrogations.”

There is presently no military precedent as to the applicability of the dual sovereignty doctrine in the context of a military court-martial for Sixth Amendment interrogation purposes, particularly in a case in which the civilian and military prosecutors have continuously worked in concert with one another throughout the pendency of the investigation, to include sharing evidence and other investigative findings and the military investigators were aware of the accused's representation by counsel at the time of interrogation.

The military judge erroneously denied MT1 Flores' motion to suppress his confession under the Sixth Amendment when NCIS agents interrogated him, as they were explicitly aware he was represented by counsel for the same offense and had invoked his right to be represented by counsel. The military does not explicitly recognize the dual sovereignty doctrine in the context of questioning a represented individual. There is no question that MT1 Flores was represented by counsel in Georgia for the same offense about which NCIS questioned him – he was arrested for rape of a child by the Saint Mary's Police Department on July 19, 2022, and was subsequently questioned about this same offense by the military on August 23,

2022. The military judge's ruling was entirely silent as to the collaborative nature of both the civilian and military investigators from the very beginning of the investigation into MT1 Flores. Under a *Blockburger* analysis, MT1 Flores was represented by counsel for the same offense in the civilian context for which the military investigators questioned him, in stark contrast to the defendant in *McNeil v. Wisconsin*, where the Court declined to extend Sixth Amendment protection to a defendant who was represented for armed robbery charges but ultimately questioned about murder charges – clearly two distinct offenses.⁵⁸

From a Sixth Amendment perspective, the CAAF has not ruled that the dual sovereignty doctrine is applicable in military courts-martial. Even if it was, there were never two separate sovereigns conducting independent investigations into MT1 Flores. Instead, the investigation involving MT1 Flores was handled jointly by both civilian and military officials beginning on about July 20, 2022, according to NCIS.⁵⁹ As discussed above, NCIS attempted to question MT1 Flores on the very same day that Detective Cruz from the Saint Mary's Police Department questioned him. It is furthermore evident that the military stayed in close contact with civilian prosecutors and investigators throughout the time that MT1 Flores was held in police custody by the state until the time that the civilians deferred

⁵⁸ *McNeil*, 501 U.S. 171.

⁵⁹ App. Ex. XVI, JA 99-100; JA 371-73.

prosecution and transferred custody of MT1 Flores back to the Navy. Military authorities also utilized the evidence and investigative findings that civilian law enforcement had collected in their case against MT1 Flores and formally acknowledged that the investigation became a joint investigation almost immediately after MT1 Flores' initial arrest.⁶⁰

In addition, based upon the messages between NCIS and the trial counsel, there was no confusion as to whether MT1 Flores was represented at the time that the second NCIS interrogation took place.⁶¹ For all intents and purposes, there were never two separate investigations occurring at all – it was officially considered one joint effort involving both military and civilian personnel, and MT1 Flores' known representation by counsel throughout this collective effort should have foreclosed NCIS from attempting to engage with him about the same offense for which his attorney had filed two motions on his behalf in state court, and where the civilian case was still pending at the time of the interrogation. Pursuant to M.R.E. 305(f)(1), MT1 Flores' invocation of his right to an attorney in the civilian case should have been considered as an invocation of his rights for the joint civilian/military law enforcement investigation.

⁶⁰ App. Ex. XVI, JA 371-73.

⁶¹ App. Ex. XXXII, JA 191.

Since the military courts have not affirmatively ruled upon the extent of the dual sovereignty doctrine as it relates to the invocation of Sixth Amendment rights, this Court should find that MT1 Flores' representation by counsel in an ongoing and open civilian case (again, one that was admittedly jointly investigated by the military) for the same offense for which NCIS questioned him should have barred NCIS from reinterrogating him without making his counsel available to him.

Admitting Appellant's statements violated the Sixth Amendment and Mil. R. Evid. 305(c)(3), which prohibits interrogation without counsel being present on a charged offense once the right attaches. Appellant's Sixth Amendment right attached when Mr. Gough filed motions on August 5, 2022, in Georgia state court.⁶² Yet, the military judge erroneously relied on the dual sovereignty doctrine to admit the statements.⁶³ This ruling misapplies *Moran v. Burbine* and fails to acknowledge that a dual sovereignty exception would allow military investigators to question a servicemember (whose right to counsel had attached) in the absence of counsel. The military judge's decision risks enabling military investigators to

⁶² App. Ex. XXVIII, JA 194.

⁶³ App. Ex. XLVII, JA 432. The military judge cited *Moran v. Burbine*, 474 U.S. 412, 430 (1986) to find Appellant "has failed to persuade this court that Georgia Rule 7.1 states a notice of appearance or constructive equivalent is an initiation of adversarial judicial proceedings causing the Sixth Amendment right to assistance of counsel to attach" but cites no law when holding "even if the Sixth Amendment attached . . . those are difference offences [sic] under a separate sovereign, the State of Georgia."

exploit jurisdictional transfers, a common practice in military-civilian investigations.⁶⁴

There is currently a Federal Circuit split regarding this issue.⁶⁵ The military judge's adoption of the majority circuit view, which applies dual sovereignty to the Sixth Amendment, ignores the Second and Eighth Circuits' rejection of this doctrine in joint investigations.⁶⁶

In *United States v. Red Bird*, the Eighth Circuit suppressed statements from a joint tribal-federal investigation, finding that coordination and the "unique and limited" nature of tribal sovereignty negated dual sovereignty.⁶⁷ Similarly, in *United States v. Mills*, the Second Circuit suppressed state-obtained statements used in a federal prosecution, holding that investigative unity trumped sovereign

⁶⁴ App. Ex. XVI, JA 99-100; R. at 147-49).

⁶⁵ App. Ex. XLVII, JA 432 ("The Second and Eighth Circuits have declined to apply dual sovereignty doctrine under the Sixth Amendment, and the Seventh and Tenth Circuits remain undecided. However the First, Fourth, Fifth, and Eleventh (where this military court[-]martial sits), have recognized the dual sovereignty doctrine under the Sixth Amendment.").

⁶⁶ *Id.*

⁶⁷ *United States v. Red Bird*, 287 F.3d 709, 715 (8th Cir. 2002).

distinctions.⁶⁸ The military’s routine collaboration with civilian authorities, as shown in this case by NCIS’s coordination with Georgia state police and reliance on the same evidence, mirrors these cases.⁶⁹

The military judge’s ruling failed to explain why military cases differ from cases like *Red Bird* and *Mills* is a critical error, as the joint investigation here renders dual sovereignty an artificial distinction that allowed NCIS to bypass protections state investigators could not.

Under these specific circumstances, the military judge abused her discretion in determining that the dual sovereignty doctrine foreclosed a Sixth Amendment violation in this case. MT1 Flores’ invocation of his right to counsel and representation by Mr. Gulf should have prevented the NCIS agents from engaging with him again until counsel was made available to him. Their failure to do so should have resulted in the suppression of his statements made to him during this ill-gotten interrogation.

⁶⁸ *United States v. Mills*, 412 F.3d 325, 330 (2d Cir. 2005) (reasoning “The fact that [*United States v. Cobb*, 532 U.S. 162 (2001)] appropriates the *Blockburger* test, applied initially in the double jeopardy context, does not demonstrate that *Cobb* incorporates the dual sovereignty doctrine: The test is used simply to define identity of offenses. Where, as here, the same conduct supports a federal or a state prosecution, a dual sovereignty exception would permit one sovereign to question a defendant whose right to counsel had attached, to do so in the absence of counsel and then to share the information with the other sovereign without fear of suppression. We easily conclude that *Cobb* was intended to prevent such a result.”).

⁶⁹ App. Ex. XVI, JA 100-101; JA 371-73; App. Ex. XXXII, JA 191-92.

Conclusion

MT1 Flores respectfully requests that this Court reverse the findings and sentence.

Respectfully submitted.

Meggie C. Kane-Cruz
Meggie C. Kane-Cruz
LT, JAGC, USN
Appellate Defense Counsel
1254 Charles Morris Street, SE
Building 58, Suite 100
Washington, DC 20374
Phone: (202) 685-8502
meggie.c.kane-cruz.mil@us.navy.mil
USCAAF Bar No. 38051

Frank J. Spinner
FRANK J. SPINNER
Attorney at Law
1420 Golden Hills Road
Colorado Springs, CO 80919
Phone: (719) 233-7192
Lawspin@aol.com
USCAAF Bar No. 26201

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Frank J. Spinner

FRANK J. SPINNER

Attorney at Law

1420 Golden Hills Road

Colorado Springs, CO 80919

Phone: (719) 233-7192

Lawspin@aol.com

USCAAF Bar No. 26201

Certificate of Filing and Service

I certify that a copy of the foregoing was delivered to the Court and delivered to the Director, Appellate Government Division (Code 46), at DACCode46@navy.mil and to the Deputy Director, Administrative Support Division, Navy-Marine Corps Appellate Review Activity (Code 40), at Joshua.D.Ricafrente.civ@us.navy.mil on March 3, 2026.

Frank J. Spinner

FRANK J. SPINNER

Attorney at Law

1420 Golden Hills Road

Colorado Springs, CO 808919

Phone: (719) 233-7192

Lawspin@aol.com

USCAAF Bar No. 26201